

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF CASWELL COUNTY, NORTH CAROLINA**

These Comments are filed by Caswell County, North Carolina in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Caswell County, North Carolina believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a "franchise" and our community has adopted a cable ordinance which operates in conjunction with the franchise agreement, the terms of which were negotiated with our cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

Caswell County, North Carolina is a NC County with a population of 24,000. Our franchised cable providers are Time Warner and Charter. Our community has negotiated cable franchises since the early 1980's.

**Our Current Franchise**

The County has two franchise agreements. We have one agreement with Charter began on July 22, 1991 and expires on July 22, 2011. We also have an

agreement with Adelphia which expires December 31, 2007. The Adelphia franchise has been transferred to COMCAST. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with Charter but will be in negotiations with COMCAST as soon as the contract to purchase Adelphia is approved by the Bankruptcy Court.

Our franchises require the cable operator to pay a franchise fee to Caswell County, North Carolina in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. None

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: None

Our franchise contains the following requirements regarding emergency alerts: All three operators and our local community agreed that the national system of alerts serves our communities, however in a dire emergency all have agreed to allow local officials to broadcast emergency messages. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. We have a provision within the franchise to enforce the federal customer service standards. We require periodic reports necessary to insure compliance with the franchise agreement.

Our franchise contains the following reasonable build schedule for the cable operator: Build to 25 homes per mile with a cost share provision should there be less than 15 homes per mile. In our Community there is less density of homes therefore it is fair to the cable operator to build to 25 homes per mile, as this is economically feasible.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: Charter and Adelphia have upgraded the cable system to provide, high speed internet and cable television service. Our agreement provides

that all operators maintain a state-of-the-art system and is based on economical feasibility of any upgrade.

Our franchise contains the following insurance and bonding requirements: Two million general liability, one million auto liability and a \$25,000 performance bond.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. In NC, counties do not have ownership of rights-of-way so Time Warner has to obtain permits from the NC Department of Transportation. Electrical permits are issued by the County for a nominal fee.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The County has the right to inspect any facet of construction of the cable system located within the county; has the right to audit franchise fees and books and records necessary to insure compliance with the franchise agreement; and has a penalty clause in which there is a formal appealable process, with cure notices and sufficient time to correct problems before penalties are assessed.

### **The Franchising Process**

The cable system serving our community also serves the local municipalities within our county. In 1991 our community worked together with the City of Yanceyville to coordinate the franchise process. This allowed the company to quickly obtain franchises in our communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as

follows: The terms of the franchise agreement are controlling except if state or federal law overtakes any of the provision, then by mutual agreement we modify the franchise agreement. This is done by amendment to our franchise and NC statutes require the franchising authority to consider any changes at two meetings before adoption.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: In our community we abide by federal statute and offer the public an opportunity to comment on past and current performance by the cable operator, discuss any cable matter and have a voice in stating the cable related needs of the community through a public hearing process. The cable operator is in attendance and it is a great opportunity for the public to hear first hand future plans, current operations and to learn how local governments operate. NC statutes require that any franchise or change to a franchise be read and adopted at two regularly scheduled meeting of the franchising authority.

### **Competitive Cable Systems**

Our community has been approached by a competitive provider to provide service.

- Granted a franchise to Caswell Cable group to serve the southern region of our community. They constructed a tower, antenna array and constructed a building for a headend. Unfortunately they failed to conduct a proper market survey and could no meet financial commitments ands went out of business.
- Has not denied any provider the opportunity to serve in our community.
- Does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

### **Conclusions**

The local cable franchising process functions well in Caswell County. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in

accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours; to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Caswell County, North Carolina therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Caswell County, North Carolina

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January 11, 2006

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